

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:20 CV 141 MR WCM

TAMMY JOHNSON BUCHANAN, )  
                                  )  
Plaintiff,                   )  
                                  )  
v.                            )  
                                  )  
APAC-ATLANTIC, INC.       )  
                                  )  
Defendant.                   )  
                                  )  
\_\_\_\_\_

ORDER

This matter is before the Court *sua sponte* following a review of Defendant's Petition of Removal. Doc. 1.

Included in the attachments to the Petition is a Motion for Leave to Amend Complaint by Plaintiff (the "Motion to Amend," Doc. 1-4, pp. 48-50). It does not appear that the Motion to Amend was ruled upon by the state court prior to removal.

Motions that were pending in state court at the time of removal are considered as if they were filed in the federal forum. See Mansaray v. Mut. Benefit Ins. Co., No. CV PX 17-0098, 2017 WL 2778824, at \*4 (D. Md. June 26, 2017). Consequently, the Motion to Amend appears to be active.

However, the Motion to Amend was made pursuant to the North Carolina Rules of Civil Procedure. Further, no proposed amended complaint or memorandum supporting the Motion to Amend appears in the record and

Defendant's position regarding the Motion to Amend is unknown.

Under these circumstances, the undersigned finds that it would be most efficient if Plaintiff were given an opportunity to re-file her Motion to Amend, if she chooses to do so, now pursuant to federal law and procedure.

In addition, the record indicates that on May 26, 2020 Defendant filed a Motion to Compel Rule 8(a)(2) Response, which sought an order directing Plaintiff to respond to a request for a written statement of monetary relief sought. As Plaintiff then submitted her response (which itself led to the removal of this case), the Motion to Compel is moot.

**IT IS THEREFORE ORDERED THAT:**

1. The Motion to Amend (Doc. 1-4, pp. 48-50) is **DENIED WITHOUT PREJUDICE**. Should Plaintiff wish to re-file the motion, she should do so in accordance with the Federal Rules of Civil Procedure and this Court's Local Civil Rules.
2. The Motion to Compel Rule 8(a)(2) Response (Doc. 1-4, pp. 45-47) is **DENIED AS MOOT**.

Signed: June 25, 2020



W. Carleton Metcalf  
United States Magistrate Judge

